

SUPREME COURT OF INDIA

Azhar Sultana

Vs.

B. Rajamani

C.A.No.1077 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

17.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Subsequent purchasers who were arrayed at a later stage in a suit for Specific Performance of Contract are before us aggrieved by and dissatisfied with a judgment and order dated 21.12.2004 passed by a learned Single Judge of the High Court of Andhra Pradesh at Hyderabad allowing the appeal from a judgment and order dated 21.7.1993 passed by the First Additional Judge, City Civil Court, Hyderabad in OS No.1436 of 1981 dismissing the suit of the plaintiff--appellant herein.

3. The factual matrix involved herein is as under:

“The property in question admittedly belonged to one Ramesh Chand Khanna, the original defendant. An agreement of sale was entered into by and between the appellant and the said Ramesh Chand Khanna in terms whereof the suit land was agreed to be sold at the rate of Rs.325/- per sq. yd. A sum of Rs.30,000/- was paid by way of advance.”

4. It now stands admitted that on or about 7.12.1981, an application was filed in terms of Section 27 of the *Urban Land Ceiling and (Regulation) Act, 1970*. The said application was rejected.

“It is also not in dispute that a suit was filed by one Bahadur Hussain against the original defendant. The said suit was decreed in favour of the said Shri Bahadur Hussain.”

5. Defendant Nos. 5 and 6 entered into a deed of sale dated 31.10.1981 with the said Ramesh Chand Khanna (since deceased) for a land measuring 217 sq. yds. for a consideration

calculated at the rate of Rs.48,000/- per bigha wherefor negotiation had to be entered into for settlement of the dispute by and between Ramesh Chand Khanna and the said Bahadur Hussain. Only after execution of the deed of sale, a notice was issued by the appellant asking Shri Khanna to execute a deed of sale in his favour.

“The suit for specific performance was filed on or about 7.12.1981. As indicated hereinbefore, in the original suit the defendant Nos.5 and 6 were not impleaded as parties. A written statement was filed by Shri Khanna on or about 30.8.1983 wherein he disclosed the factum of execution of the deed of sale dated 31.10.1981. The said defendants were impleaded as parties. One of the contentions raised by the said impleaded defendants was that they were subsequent purchasers for value and without notice to the original agreement for sale entered into by and between the appellants and the said Shri Khanna.”

6. In view of the pleadings of the parties, the learned Trial Judge framed the following issues:

"1) Whether the plaintiff is entitled for specific performance of agreement in respect of suit schedule property?

2) Whether the suit is barred by limitation?

3) To what relief?

Additional issues were also framed, viz. :

1) Whether the defendant No.6 is a bona fide purchaser of the suit property for value without notice of the suit agreement of sale in favour of the plaintiff?

2) Whether the suit agreement of sale is not binding on the defendants including the defendant Nos.5 and 6?"

The learned trial Judge decreed the suit, inter alia, opining that defendant Nos.5 and 6 had knowledge about the agreement of sale entered into by and between the plaintiff and Khanna and, thus, the provision of Section 19(b) of the Specific Relief Act was not attracted. Indisputably, before the learned Trial Judge, the plaintiff-appellant did not examine herself. On her behalf, her husband who was also the holder of a General Power of Attorney was examined. The learned Trial Judge held the agreement dated 4.12.1978 to be enforceable. It was furthermore held that the suit was not barred by limitation. It was observed that although grant of a decree for specific performance of a contract is discretionary in nature but as the plaintiff had paid a substantial amount, she should be held to be entitled thereto.

The defendant Nos.5 and 6 preferred an appeal there against. By reason of the impugned judgment, as noticed hereinbefore, the High Court allowed the said appeal.

The High Court formulated the following points for its consideration in terms of Order 41 Rule 31 of the Code of Civil Procedure, which are as under:

"1) Whether plaintiff is entitled to seek enforcement of specific performance of Ex.A1, agreement of sale?

2) Whether sixth defendant is bona fide purchaser of the suit schedule property having paid her consideration in good faith and without notice of the original contract? And

3) Whether the discretion of this Court ought not to be exercised in favour of the plaintiff for specific performance of Ex.A1?"

7. The Court in a suit for specific performance of contract is required to pose unto itself the following questions, namely:

“(1) Whether the agreement of sale is valid and binding on both the vendor and the vendee; and

(2) Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the *Specific Relief Act, 1963* (hereinafter referred to for the sake brevity as ‘the Act’).”

8. It was, however, held that readiness and willingness on the part of the plaintiff to perform her part of contract having been conveyed in a telegraphic notice (Exhibit A3); it was obligatory on the part of the plaintiff --appellant to examine herself in the suit and as she did not examine herself, the legal requirements envisaged under Section 16(c) of the Act cannot be said to have been complied with. It was furthermore held that as no evidence was adduced to establish that the amount of consideration which was required to be paid to the defendant was available with the plaintiff, she was not ready and willing to perform her part of contract. It was observed that for the aforementioned purpose, contents of the legal notice dated 16/20.11.1981 (Ex.A3) would not be decisive. Noticing that despite the fact that Section 27 of 1976 Act was declared ultra vires by this Court in *Maharao Sahib Shri Bhim Singhji; Anantalakshmi Pathabi Ramasharma Yeturi & Ors.; Jodhan Real Estate Development Co. (P) Ltd. & Anr.; Rajendra Garg Etc.; Shamshul Islam etc. v. Union of India & Anr.*¹ it was opined that as the said provision was very much on statute book at the relevant time, the deed of sale could not have been executed without obtaining such permission and even on that score, the plaintiff appellant cannot derive any advantage to establish that she had been ready and willing to perform her part of the contract.

“The learned Judge was of the opinion that as no leave was obtained by the plaintiff--appellant in terms of Order VIII Rule 9 of the Code of Civil Procedure to file subsequent written statement wherein, inter alia, it was alleged that defendant Nos.5 and 6 were subsequent purchasers with notice of the earlier agreement, no cognizance thereof should have been taken and, thus, the trial court must be said to have

committed an error in considering the same. It was furthermore opined that the trial Court committed an error in concluding that there had been a collusion between the first defendant, 6th defendant and Bahadur Hussain as would appear from the fact that neither PW1 nor PW3 who examined themselves to support the case of the plaintiff made any statement in that behalf nor was there any pleading in the plaint to that effect.

It was furthermore opined that as the said defendants were in possession of the property which would amount to a notice within the meaning of Section 3 of the Transfer of Property Act, the plaintiff would be deemed to have knowledge thereof.

As regards the second point, the High Court opined that having regard to Section 19(b) of the Act, the plaintiff could not be granted specific performance of the contract as against the said respondent who was a subsequent bona fide purchaser for value and without notice in as much as DW1 categorically stated that defendant No.1 had no knowledge of the said agreement for sale.

So far as the third point which fell for determination of the learned Judge of the High Court is concerned, it was held that as the 6th defendant had purchased the property as far back as on 31.10.1981 and had been in possession enjoyment thereof for more than 30 years, it was not a case where the discretionary jurisdiction in terms of Section 20 of the Act should be exercised in her favour.”

10. Mr. Uday .U. Lalit, learned senior counsel appearing on behalf of the appellant, in support of this appeal would urge:

“1) It was not necessary for the plaintiff to examine herself as her husband who was her General Power of Attorney holder was examined and particularly having regard to Section 120 of the Indian Evidence Act.

2) For the purpose of establishing the plea of readiness and willingness on the part of the vendee, it was not necessary to prove that she had enough liquid cash in her hand inasmuch as for the said purpose it would be sufficient to show that she could arrange such an amount for payment of consideration at the appropriate stage.

3) Collusion by and between Shri Khanna and Defendant Nos.5 and 6 is evident from the fact that the deed of sale was executed three years after the execution of the agreement for sale only for a sum of Rs.48,000/- although the amount of consideration on the basis of the agreement for sale dated 4.12.1978 would have come to Rs.65,000/- and out of which a sum of Rs.35,000/- had already been paid.

4) Defendant Nos.5 and 6 prior to their purchase of the lands in suit having not made any enquiry nor having issued any public notice, the onus of proof that they were bona fide purchasers for value and without notice, was on them.

5) The approach to the entire case on the part of the High Court was wrong as would appear from the fact that although the subsequent pleadings were held to be irrelevant, the statements made in paragraph 9 thereof were relied upon by the High Court for the purpose of showing that the statements made in paragraphs 5 and 6 of the written statement had not been adverted to and, thus, would be deemed to have been admitted, which even otherwise would amount to misreading and misinterpretation of para nine of the rejoinder.”

11. Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the respondent, on the other hand, urged:

“1) Keeping in view the peculiar facts and circumstances of this case, it is not a fit case where this Court should exercise its jurisdiction under Section 20 of the Specific Relief Act and in particular the fact that the respondent had been living in the premises since 1981.

2) Reasons for payment of a lower amount of consideration in respect of the suit premises must be considered as Shri Khanna had already lost his suit in respect of the property to Bahadur Hussain and it was only because of the intervention of the said respondents, Shri Khanna could execute the aforementioned deed of sale.

3) Since the agreement for sale dated 4.12.1978 itself stipulates that in the event any defect in title is found, the vendee was only entitled to obtain refund of the entire amount of consideration, a decree for specific performance of contract could not have been granted to the appellant.

4) Readiness and willingness on the part of a vendee must be judged from the entire backdrop of events upon taking into consideration the fact that the plaintiff did not issue any notice and/or filed any suit for a period of three years wherefrom it would be evident that he was not at all material times ready and willing to perform his part of contract.”

12. Execution of the agreement and/or genuineness thereof is not in question. Plaintiff indisputably in view of Section 16(c) of the Specific Relief Act, 1963 was required to make requisite averments that she had all along been and still is ready and willing to perform her part of the contract and also establish the same. Shri Khanna in his written statement took a specific defence that as the property was in litigation, plaintiff developed cold feet and did not evince any interest to complete the sale transaction by paying the balance of sale consideration. Even after selling the property, allegedly, the plaintiff's representative was asked to take back the amount of Rs.30,000/-.

13. We would, at this stage, notice the averments made in the said agreement for sale dated 4.12.1978:

"(i) That after obtaining the permission from Ceiling Officer, I shall execute registration in favour of the Purchaser within 2 months. It shall be my responsibility to obtain the permission from the Ceiling Office.

(ii) That the sale property is free of all private and public charges and dues. If any detected, I shall be responsible to clear the same. If any defect in title is found, the entire advance money shall be returned.

(iii) That at the time of the registration, I shall hand over the possession of the entire property to the purchaser. The expenses of the Registration shall be borne by the purchaser."

14. Indisputably, Khanna filed an application for grant of approval for sale of the premises in question. It was necessary as only in 1981, the said provision was declared ultra vires. In view of the fact that approval was required to be obtained from the competent authority, the plaintiff could not have proceeded on the assumption that the suit could be filed within a period of three years from the date of refusal on the part of the original defendant to execute the said deed of sale in terms of the agreement.

15. Defendant Nos.5 and 6 were in possession of the properties. The deed of sale was a registered one. Plaintiff, therefore, must be deemed to have notice thereof in terms of Section 3 of the Transfer of Property Act. She, however, neither in her notice nor in her plaint raised any question with regard to the bona fide or otherwise of the transaction of sale entered into by and between Shri Khanna and the respondent Nos.5 and 6. Prior to execution of the said deed of sale dated 30.10.1981, the suit filed by Khanna against Bahadur Hussain was dismissed by the appellate court by a judgment and decree dated 30.11.1978. There does not appear to be any reason as to why the plaintiff cannot be said to have been not aware thereof. It was, therefore, expected that not only the subsequent purchasers but also Bahadur Hussain be impleaded as parties in the suit. It is of some significance to notice that replication to the said written statement was filed where for no leave was obtained.

16. Indisputably again, although the written statement was filed by Shri Khanna on 30.8.1983, defendant Nos.5 and 6 were impleaded as parties only in the year 1987. It is for the first time in the replication, the plaintiff alleged that there had been collusion by and between Khanna and Bahadur Hussain. Bahadur Hussain, however, was not impleaded as a party. Replication was filed in 1991. Such a contention has been raised only in 1991 which was impermissible in law.

17. It may be true that the name of the purchaser was not disclosed but then it was open to the plaintiff to ask for other and better particulars of the said statements. Why she had to wait for a period of more than three years for impeaching the subsequent purchasers as parties has not been explained. Even an application for injunction was filed only in September 1985. According to her husband, she came to learn about the sale of property in the name of defendant No.5 only on 29.9.1986. Why an inquiry was not made in the Registration Office although the deed of sale was a registered one again defies anybody's comprehension.

Readiness and willingness on the part of the plaintiff, therefore, is required to be considered from the aforementioned backdrop of events.

18. Section 16(c) of the *Specific Relief Act, 1963* postulates continuous readiness and willingness on the part of the plaintiff. It is a condition precedent for obtaining a relief of grant of specific performance of contract. The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard and fast law can be laid down therefor.

The conduct of the parties in this behalf would also assume significance.

In *Veerayee Ammal v. Seeni Ammal*² it was observed:

"11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in *Chand Rani v. Kamal Rani* held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case." It was furthermore observed:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's *The Law Lexicon* it is defined to mean: 'A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.' "

19. It is also a well settled principle of law that not only the original vendor but also a subsequent purchaser would be entitled to raise a contention that the plaintiff was not ready

and willing to perform his part of contract. [See *Ram Awadh (Dead) by LRs. & Ors. v. Achhaibar Dubey & Anr.*³ para 6]

20. We are, however, in agreement with Mr. Lalit that for the aforementioned purpose it was not necessary that the entire amount of consideration should be kept ready and the plaintiff must file proof in respect thereof. It may also be correct to contend that only because the plaintiff who is a Muslim lady, did not examine herself and got examined on her behalf, her husband, the same by itself would lead to a conclusion that she was not ready and willing to perform her part of contract.

21. If the plaintiff has failed to establish that she had all along been ready and willing to perform her part of contract, in our opinion, it would not be necessary to enter into the question as to whether the defendant Nos.5 and 6 were bona fide subsequent purchasers for value without notice or not.

22. Furthermore, grant of decree for specific performance of contract is discretionary. The contesting respondents herein are living in the property since 1981 in their own right. There is absolutely no reason as to why they should be forced to vacate the said property at this juncture.

23. The plaintiff herself has taken a positive plea that there had been a collusion between Khanna and Bahadur Hussain. Such a case has neither been pleaded nor proved. No issue in this behalf was framed. Even otherwise, the question of the defendant's discharging the burden would arise provided the plaintiff is found to be entitled to a decree for specific performance of contract.

24. We, however, agree with Mr. Lalit that the conduct of the respondent was not good but, similarly, we cannot lose sight of the conduct of the appellants as well. She had also not brought any evidence to show that she did not have the notice of the said deed of sale.

“We, therefore, are of the opinion that interest of justice would be subserved if this Court refuses to exercise its discretionary jurisdiction in terms of Section 20 of the Act, directing the defendant to pay a sum of Rs.60,000/- to the plaintiff which sum would include the amount of advance paid by her.”

25. The appeal is disposed of. In the facts and circumstances of this case, however, there shall be no order as to costs.

¹*AIR 1981 SC 234*

²*(2002) 1 SCC 134*

³*(2000) 2 SCC 428*